

**KENTUCKY PERSONNEL BOARD
MINUTES OF DECEMBER 14, 2012**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on December 14, 2012, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Ramona Herndon-Griffin, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Linda R. Morris, Administrative Section Supervisor

2. **READING OF THE MINUTES OF REGULAR MEETING HELD NOVEMBER 9, 2012**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Judge Chandler moved to approve the minutes, as submitted. Ms. Herndon-Griffin seconded, and the motion carried 7-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek informed the Board that Mr. Donnie Hagy, Legal Secretary, was retiring at the end of the month. Mr. Hagy was a longtime state employee, and has been a valuable asset to the Board for the last six years. Mr. Sapp thanked Mr. Hagy for his hard work.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Whitney Meagher came forward to present the Personnel Cabinet's report. Also present was Commissioner Mary Elizabeth Harrod, Department of Human Resources Administration.

Ms. Meagher advised that all state employees will receive their end-of-the-month pay early on December 21, 2012.

Ms. Meagher stated that the Cabinet sent out a memo to all agencies requesting whether they had any changes to probationary periods, no requests were made.

Ms. Harrod stated that in 2012 changes were made to the employee evaluation; specifically, a third interim evaluation was added. Also, Ms. Harrod stated that for 2013 on-line evaluation training will be available to all employees, so that they understand what is expected from them and their evaluators and to have a full understanding of what the ratings mean. The training will take about an hour to complete and can be done during work hours. All employees must complete this training by the end of 2013, this will allow agencies to provide access to computers and resources for all employees. Additionally, the Cabinet is developing a manager on-line training.

Ms. Harrod advised that supervisors are to use the employee's Position Description for expectations and duties for their evaluation. If Position Descriptions do not match, a desk audit will be completed by the Classification and Compensation Branch.

Ms. Harrod stated that the 2012 audit will be an improvement over the 2011 audit, due to the changes that were made.

Chairman Sapp stated that by lining up evaluations with an employee's position description, a logical follow-up would be to see if an employee is doing what the position description states he is doing and how well he is doing. Further, it takes away the employee's uncertainty of where he stands as far as his individual performance.

At the conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for the first oral argument.

5. ORAL ARGUMENTS

A. Michele Belcher v. Education and Workforce Development Cabinet

Present for oral argument were the Appellant, Michele Belcher, and counsel for Appellee, the Hon. James Maxson. After presenting oral arguments, the parties answered questions from the Board.

Mr. Blevins moved to note Appellant's request for oral argument, Appellee's response and oral arguments, and to defer this matter to the next Board meeting. Mr. Gillis seconded and the motion carried 7-0.

B. Robert Russell v. Tourism, Arts and Heritage Cabinet (Parks)

Present for oral argument were the Appellant, Robert Russell, and counsel for Appellee, the Hon. Misty Judy. After presenting oral arguments, the parties answered questions from the Board.

6. MOTIONS

A. Marie Knear v. Cabinet for Health and Family Services

--Appellant's Motion to file late exceptions

--Appellee's Response to Motion

Mr. Sipek advised that the parties would not be present and only the motion needed to be ruled on by the Board. The parties will be at the January Board for oral arguments. Mr. Sipek stated that the Board routinely denies the filing of late exceptions as the time limit is set by statute.

Mr. Hutcheson moved to deny Appellant's motion to file late exceptions. Mr. Blevins seconded and the motion carried 7-0.

B. Witt, et al. v. Kentucky Educational Television

--Motion by KET to be Alter, Amend or Vacate

--Response by Appellant Soileau

--Reply by KET

--Personnel Cabinet's Motion to Intervene

--Response by Appellant Soileau

--Motion to Dismiss by KET

--Response by Appellant Boone (Facts and Determinations)

--Response to Interim Order by Appellant Soileau and Appellees

Mr. Sipek explained that there are six KET appeals. However, there may be a timeliness issue pertaining to two appeals, Trasimond Soileau and Thomas Boone, as they were outside one year from the date they were dismissed.

Appellants Trasimond Soileau and Thomas Boone; counsel for Appellee KET, the Hon. Clay Barkley; and counsel for Personnel Cabinet, the Hon. Whitney Meagher, were present before the Board.

Counsel for the Personnel Cabinet, Whitney Meagher, advised that the Cabinet has moved to intervene in these appeals. It is the Cabinet's position that attaching an appeal form to a dismissal letter of an unclassified employee is not necessary and this practice has been observed for a long time. Ms. Meagher stated that if an unclassified employee cannot appeal, there is no reason to attach an appeal form. The Cabinet bases their opinion on KRS 18A.095(16)(b). An unclassified employee dismissed without cause cannot appeal to the Personnel Board. Other actions not appealable to the Board are probationary employees, reversions or written reprimands. For example, in the last fiscal year, there were 340 dismissals of initial probationary employees and it is likely none of these employees received appeal forms. However, it would state in the dismissal letter they can only appeal as allowed under KRS 18A.095. If this rationale extends to those types of employees, they would have the right to appeal if alleging discrimination and would not be bound by the one-year statute of limitations.

Counsel for Appellee KET, Clay Barkley, stated that he wanted to address the one-year statute of limitations. Mr. Barkley stated that both Soileau and Boone untimely filed their appeals beyond the one-year statute of limitations [Soileau 13 months and Boone 20 months] after receiving their dismissal letter. KRS 18A.095(29) is the legislative "catch-all" for one-year statute of limitations. Mr. Barkley cited the case of *Carreer v. Health and Family Services*, 339 S.W.2d 477 (2010), to support his argument.

Counsel for Appellee requested that if the Board does not uphold the thirty-day limitation that they consider the one-year limitation.

Appellant Soileau stated that KET wanted employees to be non-merit so that the Agency would have control over what went out and was not controlled by the Governor. KET only has two merit employees, and if an employee wants a promotion it is with non-merit status. Mr. Soileau stated that the Personnel Cabinet is denying employees a right that was given to them by its interpretation of the statutes. Further, the language in the dismissal letter is misleading as it states "being fired without cause . . . no appealable action . . . except as provided by KRS 18A.095." Mr. Soileau stated that KET is based in Lexington; therefore, they do not have access to merit employees and do not know understand the merit system, and he argues the Appeal Form should have been attached to the letter. Mr. Soileau stated that if he had been provided an Appeal Form, he would have known how to file an appeal as it gives step-by-step instruction.

Appellant Boone was present, and was accompanied by his wife Vicki Boone. Ms. Boone believes the dismissal letter was misleading and confusing. When the Appellants spoke with an attorney at the Governor's office, they were told the only thing the Appellants could do would be to file a lawsuit. Ms. Boone stated that the Appellants' dismissals were retaliation and discrimination and the Appellants were fired without cause.

Mr. Sipek stated that the Board has one motion before them and that is whether to alter, amend or vacate the Interim Order, as he had already granted the Personnel Cabinet's Motion to Intervene.

Upon returning to open session, Mr. Blevins moved that all six appeals (including Boone and Soileau) go forward and to deny KET's motion. Dr. Stevens seconded and the motion carried 5-2, with Mr. Hutcheson and Mr. Gillis opposing. Mr. Gillis stated that by statute it is not necessary to attach the appeal form to dismissal letters of unclassified employees; and that appeal time would run thirty days from the date of notification. Mr. Hutcheson agreed with Mr. Gillis, but that appeal time would be limited to one year.

7. CLOSED SESSION

Mr. Blevins moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Dr. Stevens seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (11:37 a.m.)

Judge Chandler moved to return to open session. Mr. Gillis seconded and the motion carried 6-0. (12:48 a.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

- A. Michele Belcher v. Education and Workforce Development Cabinet

The Board deferred this matter after Oral Arguments above.

- B. Robert Russell v. Tourism, Arts and Heritage Cabinet (Parks)

Judge Chandler moved to note Appellant's exceptions, Appellee's response, and oral arguments and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

- C. Darrell Begley v. Dept. of Veterans' Affairs – 2 appeals

Mr. Gillis moved to accept the recommended order dismissing the appeals. Dr. Stevens seconded and the motion carried 7-0.

D. Bobby Ladd v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

E. Freddie Noe, Jr. v. Transportation Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 7-0.

F. Jason McIntosh v. Transportation Cabinet

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

G. Michael Mateja v. Kentucky State Fair Board

Mr. Blevins moved to note Appellant's request for oral argument (returned as untimely) and to accept the recommended order dismissing the appeal. Ms. Herndon-Griffin seconded and the motion carried 7-0.

H. Ronda Self v. Justice and Public Safety Cabinet (Corrections)

Dr. Stevens moved to accept the recommended order sustaining the appeal to the extent of reducing the five-day suspension to a three-day suspension. Ms. Herndon-Griffin seconded and the motion carried 7-0.

I. Ted Schlenker v. Justice and Public Safety Cabinet (DPA)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

J. Shane Smith v. Education and Workforce Development Cabinet

Judge Chandler moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- K. Karen Harper v. Justice and Public Safety Cabinet (Corrections)
- L. Rita Daughaday v. Cabinet for Health and Family Services

Mr. Hutcheson moved to find that the Appellants had not responded to the show cause order and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Ms. Herndon-Griffin seconded and the motion carried 7-0.

9. WITHDRAWALS

Dr. Stevens moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Blevins seconded and the motion carried 7-0.

- A. Timothy Flynn v. Transportation Cabinet
- B. Allison Street v. Justice and Public Safety Cabinet (Juvenile Justice)
- C. Jennifer Varner v. Education and Workforce Development Cabinet and Personnel Cabinet
- D. Ruth Walker v. Cabinet for Health and Family Services
- E. Paul E. Moore, Jr. v. Tourism, Arts and Heritage Cabinet (Parks)

10. SETTLEMENTS

Judge Chandler moved to accept the following settlements “A, B, C, D, E and G” as submitted by the parties, and to sustain the appeals to the extent set forth in the settlement. Ms. Herndon-Griffin seconded and the motion carried 7-0.

- A. Sharon Brown v. Cabinet for Health and Family Services
- B. Amanda Hawkins v. Tourism, Arts and Heritage Cabinet (Parks)

- C. John Ruth III v. Cabinet for Health and Family Services
- D. Carol Tudor v. Cabinet for Health and Family Services
- E. Jovan M. Wells v. Tourism, Arts and Heritage Cabinet (Parks)
- G. Tamara Williams v. Cabinet for Health and Family Services

Mr. Hutcheson moved to accept the following settlement “F” as submitted by the parties, and to sustain the appeal to the extent set forth in the settlement. Ms. Herndon-Griffin seconded and the motion carried 6-0, with Mr. Gillis recusing (noting that the Appellant is married to a relative of his).

- F. Kristie Stivers v. Personnel Cabinet and Justice Public Safety Cabinet
(Juvenile Justice)

11. OTHER

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Hutcheson moved to adjourn. Dr. Stevens seconded and the motion carried 7-0. (12:52)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member

Tommy W. Chandler, Member

Donald W. Blevins, Member

Ramona Herndon-Griffin, Member